

REMARKS

Claims 53-60 are pending in the present application, all of which stand rejected. In this response, Applicants amend claims 53, 56 and 58 to more particularly point out and distinctly claim Applicants' invention. Support for the claim amendments are provided in the specification, particularly, page 9, lines 5-12 and 25-27, for the amendment to claims 53 and 58, and page 5, lines 9-12, for the amendment to claim 56. No new matter is added. Applicants respectfully traverse the Examiner's rejections. Further examination and review in view of the amendments and remarks provided below are respectfully requested.

In the final Office Action mailed on February 25, 2004 (Paper No. 12), the Examiner rejected claims 53-60 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description and enablement requirements; rejected claims 53, 54 and 56 under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application No. EP 0 811 942 A2 to Cyber Media, Incorporated ("Cyber Media") in view of U.S. Patent No. 5,579,509 to Furtney et al. ("Furtney"); rejected claim 55 under 35 U.S.C. § 103(a) as being unpatentable over Cyber Media in view of Furtney and U.S. Patent No. 5,155,847 to Kirouac et al. ("Kirouac"); rejected claim 55 under 35 U.S.C. § 103(a) as being unpatentable over Cyber Media in view of Furtney and "Siebel Systems: Siebel announces production shipment of Siebel Enterprise Applications Version 3.0" by Siebel Systems ("Siebel Systems"); rejected claims 58 and 59 under 35 U.S.C. § 103(a) as being unpatentable over Cyber Media in view of Furtney and an entry in the Dictionary of Computing ("Dictionary"); and rejected claim 60 under 35 U.S.C. § 103(a) as being unpatentable over Cyber Media in view of Furtney, Dictionary, and Kirouac.

Applicants' techniques are directed to building and distributing software version upgrade kits in a distributed computing environment. A client computer downloads a software version upgrade kit to upgrade software components of an installed software product. The downloaded software version upgrade kit contains all the files and commands, including an upgrade wizard, that are needed to install the proper version of

the software components onto the client computer. An upgrade wizard is a standalone single executable that, when invoked, can read and apply an upgrade kit to the local client computer.

I. Rejections under 35 U.S.C. § 112, first paragraph

The Examiner rejected all the claims under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement and, as a result, for failing to comply with the enablement requirement. In particular, the Examiner indicated that the independent claims 53 and 58, and dependent claim 56 contain a feature that "is not previously disclosed in the originally filed specification in such a manner as to convey that the inventor(s) had possession of the claimed invention." Claims 53 and 56 have been amended to address the Examiner's concerns. As for independent claim 58, Applicants cannot find the feature that the Examiner indicates is not disclosed in the originally filed specification in the claim. If the Examiner elects to maintain this rejection, Applicants respectfully request that the Examiner specifically point out the feature in independent claim 58.

II. Rejections under 35 U.S.C. § 103

Claims 53-60 stand rejected over Cyber Media in combination with one or more of Furtney, Kirouac, Siebel Systems, and Dictionary. Applicants respectfully traverse this rejection.

Independent claim 53 includes the feature of a server computer defining, writing and building "software version upgrade kits of software installed on client computers, the software version upgrade kits each comprising files, actions, and an upgrade wizard to upgrade a software component from one version to another version" where "the upgrade wizard keeping track of the upgrade's progress and automatically recovering from errors." Independent claim 58 recites similar language.

In rejecting claim 53, the examiner indicated that a software update, along with installation information, such as installation programs, files, and the like (Cyber Media,

page 6, lines 35-36), information describing an installation process for installing a software update (cyber Media, page 8, lines 1-3), and specification of the file format of the installation files and the self-extracting archives that install necessary files (Cyber Media, page 9, lines 10-20) correspond to Applicants' software version upgrade kits. The Examiner indicated that the self-extracting archives install the necessary files and therefore, are "self-contained."

Applicants respectfully disagree with the Examiner. Cyber Media and the other references do not disclose self-contained upgrade kits that contain an upgrade wizard, and further do not teach or suggest that the server computer builds and downloads copies of such upgrade kits for clients as needed. Instead, Cyber Media merely describes a service provider computer system that stores a list of software updates that are available from third-party vendors so that a client computer can be directed to the appropriate third-party vendor computer to obtain a desired software upgrade. While the information on a third-party vendor's computer may include files, Applicants can find no mention in the references of upgrade kits that include files necessary to perform the upgrade, a list of actions to perform and an upgrade wizard to perform actions and use the files as appropriate. Moreover, the self-extracting archive in Cyber Media is an archive of the software update files in a compressed format, which is different than Applicants' upgrade wizard that applies an upgrade kit to the local computer.

While Applicants regard all the claims, as amended to address the Examiner's § 112, first paragraph, rejection, to be patentable over Cyber Media in combination with one or more of Furtney, Kirouac, Siebel Systems, and Dictionary, Applicants herein further amend independent claims 53 and 58 to include a provision that the upgrade wizard keeps track of the upgrade's progress and automatically recovers from errors. Applicants submit that as amended, claims 53 and 58 are unarguably patentable over Cyber Media.

Accordingly, Applicants respectfully request reconsideration and allowance of claims 53 and 58. Furthermore, claims 54-57 and 59-60 depend from claims 53 and 58, respectfully, and are therefore allowable on the same basis as claims 53 and 58.



RESPONSE UNDER 37 C.F.R. § 1.116

EXPEDITED PROCEDURE – Art Unit 2124

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III. Conclusion

In view of the foregoing, Applicants respectfully submit that claims 53-60 are allowable and ask that this application be passed to allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-8000.

Respectfully submitted,
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